

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**KEVIN A. TOLLIVER,**

**Petitioner,**

**CASE NO. 2:05-cv-1161**

**JUDGE SMITH**

**MAGISTRATE JUDGE KING**

**v.**

**MICHAEL SHEETS, Warden,**

**Respondent.**

**OPINION AND ORDER**

On July 19, 2007, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus be dismissed without prejudice as unexhausted unless petitioner deleted his unexhausted claim from the petition, and chose to proceed on his remaining exhausted claims. Although the parties were specifically advised of the right to object to the Magistrate Judge's *Report and Recommendation*, and of the consequences of failing to do so, no objections have been filed. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**.

Petitioner's August 6, 2007, request to delete his unexhausted claim twelve from the petition is **GRANTED**.

**IT IS SO ORDERED.**

/s/ George C. Smith

GEORGE C. SMITH

United States District Judge